

## REMARKS

Claims 1-5 have been rejected as not being directed to patentable subject matter under 35 U.S.C. §101. Claims 1-5 have been rejected under 35 U.S.C. §102(b) as being anticipated by Odenheimer *et al.* (US Patent No. 4,743,844).

### Claims 1-5 Are Directed to Patentable Subject Matter

35 U.S.C. §101 reads as follows:

"Whoever invents or discovers **any** new and useful **process**, machine, or composition of matter, or **any** new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title." (emphasis added).

Claims 1-5 are directed to a **process**, which is clearly provided for in §101. See Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility ("Guidelines") Section IV, B.

Claims 1-5 do not fall within §101 judicial exceptions. The Examiner has not identified any judicial exception as the basis for this rejection. See Guidelines Section IV, C. Claims 1-5 are not directed to a law of nature, a natural phenomenon, or a mathematical algorithm. As provided in *State Street Bank*,

every step-by-step process, be it electronic or chemical or mechanical, involves an algorithm in the broadest sense of the term. Since §101 expressly includes processes as a category of inventions which may be patented and § 100(b) further defines "process" as meaning "process, art or method, and includes new use of a known process, machine, or material," it follows

that it is no ground for holding a claim is directed to nonstatutory subject matter to say it includes or is directed to an algorithm. This is why the proscription against patenting has be limited to *mathematical* algorithms....

State Street Bank & Trust Co. v Signature Financial, 149 F3d 1368, 1374-1375 (Fed Cir. 1998) citing In re Iwahashi, 888 F.2d 1370, 1374 (Fed. Cir. 1989) (emphasis in the original). Since claims 1-5 are not directed to a **mathematical** algorithm, and not other judicial exception has been identified, they cannot be excluded as unpatentable subject matter.

Under the analysis outlined in the Guidelines, without finding a judicial exception the question of "a useful, concrete and tangible result" does not even arise. But, even if that test did arise, the preamble of claim 1 makes clear that this is directed to the measurement and display of a signal, which would be useful, concrete and tangible. Accordingly, Applicant requests allowance of claims 1-5.

Claims 1-5 Are Not Anticipated by Odenheimer *et al.*

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F2d 628, 631 (Fed. Cir. 1987) (See MPEP 2131).

Odenheimer *et al.* fails to describe the step of "defining a region of interest within the acquired signal." The cited reference does not teach determining max and min values for the acquired signal within the region of interest, as it fails to describe a region of interest. Therefore the cited reference does not teach defining a region of interest within the acquired signal, or determining max and min values for the acquired signal within the region of interest. Applicant respectfully requests allowance of claims 1-5.

Respectfully submitted,

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